IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1355 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION
Versus
MOHMEDHUSEIN UMAR RATHOD & 1 Ors.

==========

Appearance :
MS MAYA DESAI for Appellant,
MR MANOJ POPAT for Respondent No.1,
NONE for Respondent No.2.,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/07/2007

ORAL JUDGMENT

1. Ms.Maya Desai, learned counsel for the appellant and Mr.Manoj Popat, learned counsel for the respondent No.1. None for the respondent No.2 though served.

2. The appellant – Gujarat State Road Transport Corporation, being aggrieved by the award dtd.3/12/1985 passed by the Member, Motor Accident Claims Tribunal, Jamnagar in Motor Accident Claim Petition No.141 of 1983, is before this Court with a submission that the tribunal erred in making an award in sum of Rs.2,20,000=00; the award, in fact, deserves to be reduced by 78,000=00.

3. As rashness, negligence, accident and liability of the appellant are not challenged, this court is not required to look into the said aspects of the matter.

4. Ms.Desai, learned counsel for the appellant submits that the tribunal erred in awarding loss of the past earning for 12 months at the rate of Rs.1500=00 despite the fact that the claimant was confined to bed for a period of about six months only. She also submitted that the tribunal after holding the monthly income of the claimant to be Rs.1500=00 per month, could not straightway hold that the future loss would be Rs.750=00 per month, because, the claimant would not be able to go for the visits. She submits that claimant had made categorical admission that he can still go on visit on a rickshaw. She submits that the loss of the future income at best should be assessed at Rs.375=00 per month.

5. Mr.Popat, learned counsel for the respondent, on the other hand, submitted that after effect of the injury, in fact, invalidated the claimant for the entire period of one year, therefore, the tribunal was justified in making the award of Rs.18,000=00. He also submits that the claimant was making visits on his personal scooter and since after the accident, he is disabled from making the visit, the tribunal was justified in holding future loss to be Rs.750=00 per month.

6. The evidence available on the records shows that the petitioner was confined to bed from 13/2/1983 to June, 1983 and, thereafter, a plaster was cast on his leg which was to be removed on 28/8/1983. Under the circumstances, the claimant would be entitled to loss of the past earnings at the rate of Rs.1500=00 per month for a period of six months only, the award of Rs.18,000=00 under this head is reduced to Rs.9000=00.

7. So far as the loss of the prospective earning is concerned, the tribunal certainly could not hold the future loss to be Rs.750=00 per month, but at the same time, I cannot agree with the learned counsel for appellant that it should be calculated at Rs.375=00 per month. In my opinion, the future loss of prospective earning should be reduced by a

sum of Rs.35,000=00 only and the claimant should be held entitled to a sum of Rs.1,00,000=00 under this head.

8. In view of the aforesaid discussion and the calculation, I hold that the claimant would not be entitled to a sum of Rs.2,20,000=00, but would be entitled to Rs.1,76,000=00 only, I accordingly modify the award.

9. If the claimant has received the entire amount, he shall be obliged to refund the amount of Rs.44,000=00 with interest at the rate of 6% from the date of the withdrawal till the date of repayment to the GSRTC – appellant.

10. The appeal, to the extent indicated above, is allowed. No costs.

(R.S. GARG, J.)

rafik